

NO. 47502-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

MARBELLA HERNANDEZ-LORENZO, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-01559-3

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR¹

- 1. The search warrant affidavit established a nexus between the crimes alleged, the evidence sought, and the place to be searched.**
- 2. The search warrant affidavit established the veracity and basis of knowledge of the confidential informant.**
- 3. The State presented sufficient evidence that Ms. Hernandez-Lorenzo knowingly maintained a dwelling for keeping or selling controlled substances.**
- 4. Ms. Hernandez-Lorenzo fails to make a cognizable argument regarding the informant.**
- 5. Ms. Hernandez-Lorenzo fails to provide an adequate record to review her claim that the trial court erred in denying her motion for a new trial.**
- 6. The jury instruction on accomplice liability was a correct statement of the law and not an impermissible comment on the evidence.**

¹ As a preliminary matter it should be noted that Appellant assigns error to a number of decisions by the trial judge but then fails to either 1) provide argument associated with the assignment of error (assignments of error #3, #4, and #7); 2) cite any authority for the argument associated with the assignment of error (#1 and #9); or 3) provide transcripts of the hearing related to assignment of error (#1). RAP 10.3(a)(6), 10.3(g) “Unargued assignments of error in an opening brief are deemed abandoned.” *State v. Veltri*, 136 Wn.App. 818, 821-22, 150 P.3d 1178 (2007) (citation omitted). The State’s brief will address Appellant’s assignments of error that are argued. Additionally, though Appellant has assigned error to the denial of her suppression motion she does not assign error to any of the findings of fact or conclusions of law. RAP 10.3(g).

STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Marbella Hernandez-Lorenzo was charged by information with Possession of a Controlled Substance with Intent to Deliver – Methamphetamine and Maintaining a Dwelling for Controlled Substances on or about July 31, 2014. CP 1-2; RCW 69.50.402(1)(f). Prior to trial, Ms. Hernandez-Lorenzo filed a motion to suppress evidence pursuant to CrR 3.6. CP 13-27. A hearing on the motion was held on November 4, 2014 and the motion was denied by The Honorable Robert Lewis. CP 111-14; RP 1-15. Ms. Hernandez-Lorenzo then filed a motion for an in camera review of the informant and disclosure of the informant's identity. CP 79-82. After a hearing on December 5, 2014, the trial court granted the motion for an in camera review but following that review denied Ms. Hernandez-Lorenzo's motion to disclose the informant's identity. CP 119-120; RP 15-16.

The case proceeded to trial before The Honorable Robert Lewis, which commenced on February 4, 2015 and concluded on February 5, 2015. RP 46-280. The jury returned with a verdict on February 6, 2015 and found Ms. Hernandez-Lorenzo guilty of Maintaining a Dwelling for Controlled Substances and not guilty of the crime of Possession of a

Controlled Substance with Intent to Deliver. CP 167-68; RP 281-83. The trial court sentenced her to the Parenting Sentencing Alternative. CP 211-18; RCW 9.94A.030. Ms. Hernandez-Lorenzo filed a timely notice of appeal. CP 208.

B. STATEMENT OF FACTS

1. Trial facts

Marbella Hernandez-Lorenzo rented a home located at 13401 N.E. 28th Street, Number 415 in Vancouver, Washington at which she also resided. RP 89. Ms. Hernandez-Lorenzo rented out two of the rooms at the home; one room to Jaime Cardenas-Paniagua and the other room to Jessica Castillo-Bustos and Jose Enrique Camacho-Cardenas. RP 95, 192-93, 231-32, 235-37, 240-42; CP 102-108.² Mr. Cardenas-Paniagua and Mr. Camacho-Cardenas were related to each other. RP 231. Both of the men were involved in the selling of illegal drugs and did so out of the home. RP 233-36. They also always paid their rent and utilities to Ms. Hernandez-Lorenzo in cash. RP 236, 250-51. Mr. Cardenas-Paniagua's room did not have a bed as he used the room to store his things and drugs. RP 232, 236. When he stayed at Ms. Hernandez-Lorenzo's home he

² The full names and correct spellings of the participants in this case are in part taken from pre-trial documents filed in this case. These names were all introduced into evidence in the trial through testimony or the exhibits, however, the Report of Proceedings appears to attempt to phonetically spell the participants' names and is often incorrect.

stayed with her. RP 236, 252. He would also on occasion borrow her car. RP 237, 248.

On July 31, 2014, the police were surveilling the home of Ms. Hernandez-Lorenzo prior to executing a search warrant on it. RP 90, 187-89. During the surveillance the police stopped Mr. Cardenas-Paniagua as he was driving away from the home in Ms. Hernandez-Lorenzo's Nissan Xterra. RP 90, 188, 207-08, 211, 248. Following the detainment of Mr. Cardenas-Paniagua, the officers of the Clark-Vancouver Regional Drug Task Force (DTF) executed the search warrant. RP 53-54, 90-91, 187-89, 199.

The police discovered 751.8 grams of methamphetamine wrapped up and hidden in a box of laundry detergent in the laundry room, 2.4 grams of methamphetamine and 2.6 grams of blue methamphetamine in a safe, \$43,459 found amongst three different rooms, multiple digital scales, baggies, rubber bands, and a notebook with drug notes. RP 60-73, 82, 97-101, 107-109, 135, 138-141, 199-206. At the time of the seizure of the drugs, the street value of the 751 gram portion of methamphetamine was over \$20,000. RP 216. The DTF officers also seized documents linking each of the above listed parties to their respective rooms. RP 94-97. All of the drugs and drug paraphernalia were found in the laundry room, the room of Mr. Cardenas-Paniagua, and the room of Mr. Camacho-Cardenas.

\$1,136 in cash was found in Ms. Hernandez-Lorenzo's bathroom. RP 72-73, 80, 82, 107-109.

Ms. Hernandez-Lorenzo was questioned at the scene. RP 190-91. She confessed that she knew Mr. Cardenas-Paniagua and Mr. Camacho-Cardenas were selling illegal drugs out of the residence, that the money she received from them for bills and rent were the proceeds of drug trafficking, and that she had seen numerous people come into the residence and purchase drugs from Mr. Cardenas-Paniagua. RP 192-93. In fact, prior to trial, Mr. Cardenas-Paniagua pled guilty to Possession of a Controlled Substance with Intent to Deliver based on the evidence found pursuant to the search warrant. RP 234.

At trial, Ms. Hernandez-Lorenzo denied confessing to the police. RP 249-250, 252-54. She also denied ever seeing drugs or drug paraphernalia in the house and any knowledge of the fact that Mr. Cardenas-Paniagua and Mr. Camacho-Cardenas were selling methamphetamine out of the home. RP 242, 254-55. Additionally, Mr. Cardenas-Paniagua was transferred from prison to testify, and he claimed that Ms. Hernandez-Lorenzo had nothing to do with selling methamphetamine. RP 235.

2. The search warrant affidavit and 3.6 hearing

Detective Robert Latter of the DTF authored a search warrant affidavit dated July 30, 2014 that led to the execution of a search warrant at Marbella Hernandez-Lorenzo's and Jaime Cardenas-Paniagua's home at 13401 NE 28th Street #415, Vancouver, Washington on July 31, 2014. The affidavit for search warrant is attached as Appendix A.

Detective Latter's Training, Experience, and Knowledge.

At the time of his authorship of the search warrant affidavit Det. Latter had been employed by the Clark County Sheriff's Office for twelve years and nine months and assigned to the DTF for five years and nine months. App. A at 4. During his period of employment, Det. Latter completed the 40 hour Clandestine Drug Laboratory Safety and Operations Course and the 80 hour Drug Enforcement Administration Basic Narcotics Officer Course. *Id.* Additionally, Det. Latter has participated in several drug investigations and arrests, including having written or taken part in the service of a number of drug related warrants. *Id.*

As part of Det. Latter's training and experience he can identify controlled substances through sight and smell. *Id.* He also has personally seized controlled substances while participating in drug related arrests and investigations and confirmed such as controlled substances through field

tests and state laboratory examinations. *Id.* Moreover, through Det. Latter's training and experience he knows that 1) persons involved in the distribution of controlled substances commonly maintain records at their homes to assist them in their business activities; 2) persons who distribute controlled substances use packaging materials to do this and that these packaging materials will be found at the same location as the controlled substances; and 3) persons who distribute methamphetamine will also frequently consume the drug and will have drug paraphernalia at their residence. *Id.* at 6.

The Confidential Informant.

The following is known about the confidential informant as provided in Det. Latter's affidavit for search warrant:

As to the informant's credibility, Detective Gabriel and I met with the CRI to conduct a reliability buy of methamphetamine. Upon meeting with the CRI he/she was searched for drugs, money, or other contraband and nothing was found. The CRI's vehicle was also search for the same and nothing was found. I provided the CRI with money I had previously checked out from the CVRDTF drug fund. The CRI was then kept under constant supervision as he/she drove to a meeting location and made contact with a known methamphetamine dealer. Once at the location the CRI and suspect exchanged drugs for money. The CRI was observed leaving the location and drove directly back to a pre-arranged meeting location where Detective Gabriel and I made contact with the CRI. The CRI handed me a baggy containing a crystal substance the CRI identified as methamphetamine. A subsequent field test confirmed the presence of methamphetamine. The CRI and his/her vehicle

were again searched for drugs, money, or other contraband and nothing was found.

As to the informant's basis of knowledge, the CRI has given information to the Drug Task Force that been corroborated through other sources. The CRI has knowledge of the drug trade from previous involvement in the drug subculture. As to the informant's motivation, the CRI is working for the Clark-Vancouver Regional Drug Task Force in exchange for consideration of a pending felony drug charge. As to the informant's criminal history, the CRI has been convicted of two felony charges stemming from violations of the Uniformed Controlled Substances Act, and two traffic misdemeanors.

App. A at 5-6.

The Investigation

Within 72 hours prior to the July 30, 2014 authorship of the search warrant affidavit, Det. Latter with DOC Officer Jennifer Thomas met with a CRI who was working with the DTF. App. A at 4. The CRI knew the suspect, and known methamphetamine trafficker, as Jaime and was able to positively identify him through a Clark County Jail booking photo as Jaime Cardenas-Paniagua. *Id.* The CRI had contacted Mr. Cardenas-Paniagua and arranged to purchase methamphetamine from him prior to meeting with Det. Latter and Ofc. Thomas. *Id.* Upon the two officers meeting with the CRI, they searched his/her vehicle and person for drugs, money, and other contraband but found none. *Id.* Det. Latter then provided the CRI with money checked out from the DTF drug fund. *Id.* at 4.

The officers next followed the CRI to Mr. Cardenas-Paniagua's residence where surveillance units kept the CRI under constant surveillance and observed him/her enter the residence. *Id.* Shortly thereafter, the CRI was observed exiting Mr. Cardenas-Paniagua's residence and kept under constant surveillance while he/she drove to a pre-arranged location to meet with Det. Latter and Ofc. Thomas. *Id.* at 5. At the meeting, the CRI provided Det. Latter with a baggy containing an amount methamphetamine that was consistent with the amount of money provided to the CRI and which field tested positive. *Id.* The CRI and his/her vehicle was searched once again and no contraband was found.

ARGUMENT

The Magistrate did not abuse its discretion when it authorized the search warrant because the search warrant affidavit set forth facts and circumstances sufficient to establish probable cause.

Under both the Constitution of the United States and Washington's Constitution, a search warrant may issue only upon a determination of probable cause. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999). "Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity and that evidence of the crime can be found at the place to be searched." *Id.* Accordingly,

probable cause requires “a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.” *Id.*

Standard of Review

A judge exercises judicial discretion in determining whether to issue a search warrant. *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002). That decision “is reviewed for abuse of discretion.” *Id.* A search warrant, once issued, is entitled to “a presumption of validity” and reviewing courts shall accord “great deference to the magistrate’s determination of probable cause.” *State v. Chenoweth*, 160 Wn.2d 454, 477, 158 P.3d 595 (2007); *Vickers*, 148 Wn.2d at 108; *State v. O’Connor*, 39 Wn.App 113, 123, 692 P.2d 208 (1984) (“Both the superior court and [the Court of Appeals] are required to give great weight to a magistrate’s determination that probable cause exists . . .”). As a result, “[d]oubts concerning the existence of probable cause are generally resolved in favor” of the validity of the search warrant. *Vickers*, 148 Wn.2d at 108-109; *Chenoweth*, 160 Wn.2d at 477. Moreover, reviewing courts are to examine affidavits in support of a search warrant in “a commonsense, not a hypertechnical manner.” *State v. Ollivier*, 178 Wn.2d 813, 847, 312 P.3d 1 (2013) (citations omitted). Because at a suppression hearing on a search warrant the trial court acts in an “appellate-like capacity,” a higher

appellate court, while still deferring to the magistrate's determination, reviews *de novo* the "trial court's assessment of probable cause." *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008) (citing *State v. Chamberlin*, 161 Wn.2d 30, 40–41, 162 P.3d 389 (2007)).

Furthermore, a reviewing court limits its review of findings of fact entered following a suppression motion solely to "those facts to which error has been assigned." *State v. Shaver*, 116 Wn.App. 375, 379, 65 P.3d 688 (2003) (quoting *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)). Any unchallenged findings of fact are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (citations omitted).

I. The search warrant affidavit established a nexus between the crimes alleged, the evidence sought, and the place to be searched.

As mentioned above, probable cause requires "a nexus between criminal activity and the item[(s)] to be seized and also a nexus between the item to be seized and the place to be searched." *Thein*, 138 Wn.2d at 140. Any evidence that would be helpful in the prosecution of a crime has a sufficient nexus to that crime for the purposes of issuing a search warrant. See *Messerschmidt v. Millender*, --- U.S. ---, 132 S.Ct. 1235, 1247-49, 182 L.Ed.2d 47 (2012); *Warden, Md. Penitentiary v. Hayden*, 387 U.S. 294, 307, 87 S.Ct. 1642, 18 L.Ed.2d 782 (1967) (holding that the Fourth Amendment allows a search for evidence when there is "probable

cause . . . to believe that the evidence sought will aid in a particular apprehension or conviction”). RCW 10.79.015 supports this proposition as it provides that “[a]ny . . . magistrate, when satisfied that there is reasonable cause, may . . . issue [a] search warrant in the following cases, to wit: . . . (3) *[t]o search for and seize any evidence material to the investigation or prosecution of . . . any felony.*” (emphasis added); *see also* CrR 2.3 (a warrant may be issued “to search for and seize *any* (1) *evidence of a crime*; or (2) contraband, *the fruits of crime*, or things otherwise criminally possessed; or (3) weapons or other things by means of which a crime has been committed or reasonably appears about to be committed. . . .”) (emphasis added).

Consequently, search warrants, in addition to authorizing a search for direct evidence of the crime at issue, may be issued to search for evidence that may “help to establish motive,” “support the bringing of additional, related charges,” or “might prove helpful in impeaching [a defendant] or rebutting various defenses he could raise at trial.” *Messerschmidt*, 132 S.Ct. at 1247-48. The “magistrate may infer the existence of [this type of] evidence from the facts and circumstances provided in the affidavit.” *State v. Maddox*, 152 Wn.2d 499, 510-11, 98 P.3d 1199 (2004) (holding there were facts in the affidavit from which the magistrate could infer the likely presence of drug dealing paraphernalia

even though the affidavit was silent as to whether the informant saw those items in the defendant's home). Such inferences from search warrant affidavits are allowed because as the Washington Supreme Court has "often stated, the affidavit is not required to establish a prima facie case of guilt, but rather a likelihood that evidence of criminal activity will be found." *Id.* at 511 (citation omitted); *Messerschmidt*, 132 S.Ct at Fn. 7 (the issuing magistrate does not need "probable cause to believe evidence will conclusively establish a fact before permitting a search, but only probable cause [] to believe the evidence sought will aid in a particular . . . conviction.") (citation and quotation omitted).

Thus, a nexus exists between the criminal activity and the place searched if the affidavit sets forth "facts and circumstances sufficient to establish a reasonable inference . . . that evidence of the criminal activity can be found at the place to be searched" *Maddox*, 152 Wn.2d at 505. In making such a determination, a magistrate can take into account the "experience and expertise" of the officer who authored the search warrant affidavit as well as "where evidence is likely to be kept, based on the nature of the evidence and the type of offense." *Id.* at 511, 505. And while "generalizations regarding common habits of drug dealers, standing alone, cannot establish probable cause, such generalizations may support probable cause where a factual nexus supported by specific facts is also

provided and where the generalizations are based on the affiant's experience.” *Maddox*, 152 Wn.2d at 511.

Maddox is instructive. There a confidential informant made a controlled buy of methamphetamine from the defendant at the defendant’s house. *Id.* at 503. After the controlled buy, the State obtained a search warrant for the defendant’s home that authorized a search of that home for “methamphetamine; paraphernalia used in the distribution of methamphetamine, including scales, baggies, and other items; currency; and books, photographs, and other records related to the manufacture, sale, and distribution of methamphetamine.” *Id.* The State did not execute the search warrant immediately, and, instead, attempted two additional controlled buys with the defendant. *Id.* at 504. At the last controlled buy the defendant informed the confidential informant that “he was out and that he would have some in a couple of days.” *Id.* The next day the State executed the search warrant finding an electronic scale, marijuana, ecstasy, and \$2,100 in cash, but no methamphetamine. *Id.*

The defendant argued that “the warrant should not have authorized a search for evidence of methamphetamine dealing because the informant did not claim to have seen methamphetamine (except what he was purchasing) or any drug dealing paraphernalia while in the [defendant’s] residence during the controlled buy” and that there was “no factual nexus .

. . because during the controlled buys the informant did not see scales, baggies, and other paraphernalia inside [defendant]'s home. *Maddox*, 152 Wn.2d at 510. *Maddox*, held otherwise stating “[h]ere, there were ample facts in the affidavit from which a magistrate could infer the likely presence of drug dealing paraphernalia.” *Id.* at 511. “Furthermore, the probable cause to search for drug paraphernalia was not affected by [the defendant]'s statement to the informant that [the defendant] was out of drugs temporarily. On the contrary, the statement that he was temporarily out of drugs, but would soon receive more drugs to sell, reinforced the probability that [the defendant] was engaged in the ongoing activity of drug dealing.” *Id.* at 512.

In addition, the facts in the affidavit were buttressed by the search warrant's author's (a detective) “recitation of her training and experience in investigating drug crimes with the task force” which included investigating over 230 drug cases. *Id.*; *Id.* at 512. Specifically, the detective “stated that she learned from her experience that dealers use baggies and scales in packaging controlled substances for distribution and that they generally maintain records of their drug business” and “recounted the controlled buy, which provided a factual nexus between [the defendant]'s drug dealing and his home, along with specific facts regarding [the defendant]'s long history as a drug dealer.” *Id.* at 511-12.

Because the search warrant affidavit provided a factual nexus supported by specific facts and the detective's generalizations were based on her experience, the magistrate issuing the warrant appropriately considered the detective's statements. *Id.* at 512.

Here, the trial court properly concluded that "[t]he affidavit for search warrant provided sufficient information to allow the reviewing judge to determine that there was probable cause to believe that the evidence sought was at the location to be searched." CP 113 (Conclusion of Law #4). Just as in *Maddox*, there is a search warrant affidavit authored by a detective with a substantial amount of training and experience in drug crimes, a suspect (Mr. Cardenas-Paniagua) known to the affiant and CRI as a drug dealer, and a controlled buy taking place with the suspect (Mr. Cardenas-Paniagua) at the location at which the affiant sought to search. Here, however, the controlled buy relied on to support probable cause happened within 72 hours of when the affidavit was authored. Moreover, it is an unchallenged finding of fact, and thus a verity, that the location to be searched was asserted to be the residence of Mr. Cardenas-Paniagua. CP 112 (Finding of Fact #2). This finding follows from a commonsense review of the search warrant affidavit wherein it details the process of setting up and executing the controlled buy with the CRI and Mr. Cardenas-Paniagua. App. A at 4-5.

Consequently, given the great deference accorded to the magistrate's determination of probable cause, there was a nexus between the alleged criminal activity and the location at which the police sought to search, and probable cause supported the search warrant. The magistrate did not abuse its discretion and the trial court did not err.

II. The search warrant affidavit established the veracity and basis of knowledge of the confidential informant.

The veracity of a confidential informant is most frequently established "by a showing that the informant has previously supplied accurate, helpful information to law enforcement authorities." *State v. Lair*, 95 Wn.2d 706, 710, 630 P.2d 427 (1981); *State v. Jackson*, 102 Wn.2d 432, 437, 688 P.2d 136 (1984). "The existence of a proven 'track record' of reliability reasonably supports an inference that the informant is presently telling the truth." *Id.* Establishing the track record of an informant sufficient to establish his or her veracity is not an onerous task as general averments that an informant provided information in the past that proved accurate is sufficient. *State v. Fisher*, 92 Wn.2d 962, 964-66, 639 P.2d 743 (1982); *Aguilar v. State of Tex.*, 378 U.S. 108, 115 FN. 5, 84 S.Ct. 1509 (1964) (citing and discussing *Jones v. United States*, 362 U.S. 257, 80 S.Ct. 725, 4 L.Ed.2d 697 (1960)). On the other hand, "the mere statement that an informant is credible is not sufficient." *State v. Woodall*,

100 Wn.2d 74, 76, 666 P.2d 364 (1983) (quoting *Fisher*, 92 Wn.2d at 965) (holding that an affidavit that merely stated that the informant is “a reliable informant who has proven reliable in the past” was insufficient to establish the informant’s veracity).

In *State v. Fisher* our Supreme Court reviewed a search warrant affidavit that included the following averment concerning the reliability of a confidential informant: “The informant is reliable in that he/she has given information regarding drug trafficking (sic.) and use in the past which has proven to be true and correct.” 92 Wn.2d at 964. *Fisher*, in reviewing said averment, explained:

Affiant stated that the informant had given him information proven to be true and correct in the past. While this is more than drawing the conclusion that the informant is credible and admittedly less than stating the facts as to why the past information has proven to be ‘true and correct’, it still is a factual statement not a conclusion of the affiant. We hold in this case that it is enough to enable a neutral magistrate to determine if the informant is credible.

Id. at 965. *Fisher* found “substantial authority” for the proposition that “general allegations such as those before us are sufficient.” *Id.* at 965 (citations omitted). Specifically, *Fisher* noted that “[i]n *Aguilar* . . . the Supreme Court . . . approved of an affidavit which it upheld in *Jones*” that “alleged that the informant ‘has given information to the undersigned on previous occasion and which was correct.’” *Id.* at 966. *Fisher* concluded

that “[t]his type of allegation informs the magistrate why the affiant believed the informant to be reliable. It states a fact and is more than a bare assertion or conclusion.” *Id.*

A “track record” for providing accurate information to the police is not the only method for establishing the veracity of an informant. *Lair*, 95 Wn.2d at 710-12; *Jackson*, 102 Wn.2d at 437; *State v. Casto*, 39 Wn.App, 229, 233-34, 692 P.2d 890 (1984). For example, a successful controlled buy may itself be sufficient to “establish an informant's reliability.” *State v. Lane*, 56 Wn.App 286, 293, 786 P.2d 277 (1989) (citation omitted); *Casto*, 39 Wn.App. at 233-35.³ This is because, as *Casto* explained:

the informant's assertion that drugs will be found—the key to a search warrant—puts his own credibility on the line. By “coming out full,” he proves the truth of his earlier assertion and establishes his own credibility, at the same time obtaining information for the law enforcement investigation. Such an informant has a reason to be reliable. As well, the search and surveillance conducted in a controlled buy remove much of the informant's opportunity to fabricate.

39 Wn.App. at 235. In fact, “[p]roperly executed, a controlled buy can thus provide the facts and circumstances necessary to satisfy *both* prongs [(veracity and basis of knowledge)] of the test for probable cause.” *Id.*, at

³ *But see State v. Steenerson*, 38 Wn.App. 722, 726, 688 P.2d 544 (1984) (holding that a controlled buy alone does not establish veracity where a confidential informant was directed by police to go to a given location and buy drugs from a specific person)

234 (emphasis in original). In addition, the veracity of an informant can be established by showing that the informant was trading the information for a favorable sentencing recommendation or that under the circumstances the informant had a strong motive to be truthful. *Jackson*, 102 Wn.2d at 437; *State v. Ollivier*, 161 Wn.App 307, 318, 254 P.3d 883 (2011); *State v. Lund*, 70 Wn.App. 437, 451 FN. 9, 853 P.2d 1379 (1983) (collecting cases); *State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978); *Lair*, 95 Wn.2d at 712.

Here, the trial court properly concluded “[t]he affidavit for search warrant provided an adequate basis for the district court judge’s conclusion that the informant had knowledge of the information provided, and was reliable. The track record of the informant, and the circumstances of the controlled purchase of methamphetamine, established the informant’s veracity.” CP 113 (Conclusion of Law #3). This conclusion is supported by the law because the information supporting the veracity of the CRI in Det. Latter’s affidavit is plentiful compared to the information in the *Fisher* affidavit and the *Jones* affidavit approved of in *Aguilar*. Det. Latter’s CRI 1) successfully completed a controlled buy prior to completing the subsequent, successful controlled buy with Mr. Cardenas-Paniagua; 2) gave information to the Drug Task Force in the past that had

been corroborated through other sources; and 3) was trading his/her information and cooperation for a favorable sentencing recommendation.

The affidavit also contained sufficient information to establish the CRI's basis of knowledge. First, as noted in *Casto*, "[p]roperly executed, a controlled buy can thus provide the facts and circumstances necessary to satisfy both prongs [(veracity and basis of knowledge)] of the test for probable cause." 39 Wn.App. at 235. This controlled buy suffered from no defects. Additionally, after both controlled buys in which the CRI was involved he or she was able to identify the substance purchased as methamphetamine and subsequent field tests confirmed the CRI's identifications, the CRI had given information in the past to the DTF that had been corroborated as true through other sources, and the CRI was currently involved in the drug trade and drug subculture as evidenced by his or her pending drug charge, past drug convictions, and ability to conduct controlled buys. Consequently, the information in the affidavit established the veracity and basis of knowledge of the CRI and the magistrate did not abuse its discretion in so determining when it authorized the warrant.

There is no basis for suppression of evidence based on the return of the search warrant.

“[D]efects relating to the return of a search warrant are ministerial and do not compel invalidation of the warrant or suppression of its fruits, absent a showing of prejudice by the defendant.” *State v. Smith*, 15 Wn.App. 716, 719, 552 P.2d 1059 (1976); *State v. Parker*, 28 Wash.App. 425, 426–27, 626 P.2d 508 (1981). In fact, absent a showing of prejudice a warrant will not be invalidated or its fruits suppressed even if “(1) the search warrant affidavit, the search warrant, the search warrant return, and the search warrant inventory were not filed with the issuing court; (2) the search warrant return was not accompanied by the inventory of property seized; (3) the police did not provide [the defendant] with a copy of the warrant or a receipt for the property seized; and (4) the search warrant inventory was not made in the presence of any other person and falsely states that it was.” *State v. Temple*, 170 Wn.App. 156, 161-62, 285 P.3d 149 (2012).

Here, Ms. Hernandez-Lorenzo fails to even attempt to make an argument that she suffered prejudice as a result of when the search warrant return was filed. Moreover, pursuant to CR 6(a) the search warrant was timely filed since it was executed on July 31, 2014, a Thursday, and returned on August 5, 2014, a Tuesday.

III. The jury instruction on accomplice liability was a correct statement of the law and not an impermissible comment on the evidence.

Here, Ms. Hernandez-Lorenzo complains that the court erred when it gave the pattern instruction on accomplice liability, which contained the language: “A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.” Br. of App. at 15-16; WPIC 10.51; CP 156. Ms. Hernandez-Lorenzo does not argue that contested portion is an incorrect statement of the law, but rather that it was a comment on the evidence that negated her defense. Br. of App. at 16-18.

Ms. Hernandez-Lorenzo cites no authority for her proposition that the pattern accomplice instruction is an unconstitutional comment on the evidence. Br. of App. at 15-18. Instead, she cites *State v. Brush*, but makes no argument connecting either the facts or analysis in that case to this one. 183 Wn.3d 550, 353 P.3d 213 (2015). Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” *State v. Young*, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (quoting *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)); *State v. Dow*, 162 Wn.App. 324, 331, 253 P.3d 476 (2011). An appellate court need not consider issues unsupported by citation to authority. *State v. Lord*, 117 Wn.2d 829, 853, 822 P.2d 177 (1991).

Nonetheless, the instruction given to the jury here was a correct statement of the law and not a comment on the evidence. It is well-settled that “a person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.” *State v. Jackson*, 87 Wn.App. 801, 817-818, 944 P.2d 403 (1997) (citation omitted); *State v. Boast*, 87 Wn.3d 447, 455-56, 553 P.2d 1322 (1976); *State v. Toomey*, 38 Wn.App 831, 840, 690 P.2d 1175 (1984); *State v. Modest*, 88 Wn.App. 239, 251, 944 P.2d 417 (1997). Moreover, the instruction did not resolve “a contested factual issue for the jury” or “relieve[] the State of its burden. . . .” *Brush*, 183 Wn.2d at 559. The State still had to prove beyond a reasonable doubt Ms. Hernandez-Lorenzo’s liability as a principal or an accomplice to a crime where, properly, her presence was immaterial to that determination.

Even if the jury was incorrectly instructed, however, any error was harmless beyond a reasonable doubt. Even when taking the evidence in the light most favorable to Ms. Hernandez-Lorenzo she was present during the ongoing commission of the crime for which she was found guilty. Both Ms. Hernandez-Lorenzo and Mr. Cardenas-Paniagua testified that she had been back residing at her residence about a month before the search warrant was executed. RP 233, 244. The evidence discovered pursuant to that warrant established an ongoing, knowing use of the residence for the

keeping or selling of controlled substances as over \$40,000, over 750 grams of methamphetamine,⁴ and drug paraphernalia were found. Moreover, Mr. Cardenas-Paniagua's admissions that he sometimes sold drugs from inside the house and that he used his rented room to store drugs and Ms. Hernandez-Lorenzo's confession show that her absence from the residence sometime a month prior to execution of the search warrant was not dispositive of her liability—the evidence found in addition to the admissions established her liability as a principal. RP 233, 244.

IV. The State presented sufficient evidence that Ms. Hernandez-Lorenzo knowingly maintained a dwelling for keeping or selling controlled substances.

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” *Salinas*, 119 Wn.2d at 201.

Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The reviewing court defers to the

⁴ A personal use amount is about a gram. RP 53.

trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533 (1992). Furthermore, “specifics regarding date, time, place, and circumstance are factors regarding credibility . . .” and, thus, matters a jury best resolves. *State v. Hayes*, 81 Wn.App. 425, 437, 914 P.2d 788 (1996) *rev. denied* 130 Wn.2d 1013 (1996).

Under the drug dwelling statute, 69.50.402(1)(f), there must be: “(1) some evidence that the drug activity is of a continuing and recurring character; and (2) that *a* substantial purpose of maintaining the premises is for the illegal drug activity.” *State v. Ceglowski*, 103 Wn.App. 346, 352-53, 12 P.3d 160 (2000) (emphasis added). Nonetheless, a small quantity of drugs or evidence found “on only a single occasion” can be sufficient “to show a crime of a continuing nature.” *Id.* at 353. (citation omitted)

Here, there was sufficient evidence that Ms. Hernandez-Lorenzo did knowingly keep or maintain a dwelling for keeping or selling controlled substances. Ms. Hernandez-Lorenzo confessed to the DTF that she knew the persons to whom she was renting rooms were selling illegal drugs out of the residence, that the cash money she received from them for bills and rent were the proceeds of drug trafficking, and that she had seen numerous people over the time that she lived there that had come into the

residence to purchase drugs. Additionally, Mr. Cardenas-Paniagua testified that he essentially rented his room for the purpose of storing his drugs and other items, that he sometimes sold drugs out of the house and that Mr. Camacho-Cardenas, the other roommate, was selling drugs as well. The physical evidence found overwhelmingly corroborated the admissions, the fact that this was a crime of a continuing nature, and Ms. Hernandez-Lorenzo's guilt.

V. Ms. Hernandez-Lorenzo fails to make a cognizable argument regarding the informant.

The State is unable to respond in substance to Ms. Hernandez-Lorenzo's "Issues Related To Assignments Of Error No. 4" because no cognizable argument is advanced. Br. of App. at 18-19. Ms. Hernandez-Lorenzo cites no case law, statutory authority, RAP, or portion of the court record to advance her request that "this Court . . . review the trial court's decision not to disclose [the informant's identity] on an abuse of discretion standard." Br. of App. at 19. Moreover, the item that she wishes this court to review is presently sealed. Thus, this court should decline Ms. Hernandez-Lorenzo's invitation to review the evidence for what she seeks.

VI. Ms. Hernandez-Lorenzo fails to provide an adequate record to review her claim that the trial court erred in denying her motion for a new trial.

Ms. Hernandez-Lorenzo claims that the trial court erred when it denied her motion for a new trial based on “cumulative error” and the accomplice instruction addressed above. That said, Ms. Hernandez-Lorenzo has failed to provide a transcript for the sentencing hearing at which this motion was presumably argued and at which the court denied the motion. Moreover, she fails to provide any authority for her argument that the court erred.

“The party presenting an issue for review has the burden of providing an adequate record to establish such error . . . and should seek to supplement the record when necessary.” *State v. Sisouvanh*, 175 Wn.2d 607, 619, 290 P.3d 942 (2012) (citing RAP 9.2(b), 9.9, 9.10); *State v. Miller*, 179 Wn.App 91, 100, 316 P.3d 1143 (2014) (“[A]ppellants bear the burden of perfecting the record for appellate review.”). A reviewing court may “decline to address a claimed error” when the appellant provides the court with an inadequate record or one in which there is a material omission. *Id.* (citation omitted); *State v. Bennett*, 168 Wn.App. 197, 206-207 N. 9, 275 P.3d 1224 (2012) (holding that defendant bears the burden of perfecting the record and the failure to designate necessary materials precludes review).

The failure to provide a transcript of the hearing at which the motion for a new trial was likely addressed is a material omission. Thus, this court should decline to address the claimed error.

CONCLUSION

For the reasons argued above Ms. Hernandez-Lorenzo's conviction should be affirmed.

DATED this 15 day of October, 2015.

Respectfully submitted:

ANTHONY F. GOLIK
Prosecuting Attorney
Clark County, Washington

By:


AARON T. BARTLETT, WSBA #39710
Deputy Prosecuting Attorney

APPENDIX A

IN THE DISTRICT COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

No.

Plaintiff,

AFFIDAVIT FOR SEARCH WARRANT

CARDENAS-PANIAGUA, Jaime
02/01/1986

Defendant.

STATE OF WASHINGTON)
COUNTY OF CLARK)
ss

I, Detective Robert Latter, being first duly sworn upon oath, hereby depose and say that I have good and sufficient reason to believe that the following goods, to wit:

(1) Methamphetamine, a substance controlled by the Uniform Controlled Substances Act of the State of Washington, and items used to facilitate the distribution and packaging of Methamphetamine;

(2) Records relating to the transportation, ordering, manufacturing, possession, sale, transfer and/or importation of controlled substances in particular, Methamphetamine, including but not limited to books, notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars, receipts, electronic recording media, and the like;

(3) Records showing the identity of co-conspirators in this distribution operation, including but not limited to address and/or phone books, telephone bills, Rolodex indices, notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars, receipts, and the like, to include cell phones and the SIM, ESN and IMEI numbers for the cellular phone(s), any passwords or access codes to access the electronic memory of the cellular phone, status of the account, and incoming and outgoing call detail records, said phones to be seized and examined by a qualified analyst at the Clark County Sheriff's Office Computer Forensics Lab;

1 (4) Records which will indicate profits and/or proceeds of the illegal
2 distribution operation of Methamphetamine, to include, but not limited to books,
3 notebooks, ledgers, check book ledgers, handwritten notes, journals, calendars,
4 receipts, electronic recording media, and the like;

5 (5) Books, records, invoices, receipts, records of real estate transactions,
6 purchase, lease or rental agreements, utility and telephone bills, records reflecting
7 ownership of motor vehicles, keys to vehicles, bank statements and related records,
8 passbooks, money drafts, letters of credit, money orders, bank drafts, pay stubs, tax
9 statements, cashiers checks, bank checks, safe deposit box keys, money wrappers,
10 and other items evidencing the obtaining, secreting, transfer, concealment, and/or
11 expenditure of money and/or dominion and control over assets and proceeds;

12 (6) Photographs, including still photos, negatives, video tapes, films,
13 undeveloped film and the contents therein, and slides, in particular, photographs of
14 co-conspirators, of assets, and controlled substances, in particular Methamphetamine.

15 (7) Currency, precious metals, jewelry, and financial instruments for the
16 purpose of tracking proceeds and/or profits;

17 (8) Address and/or telephone books, telephone bills, Rolodex indices and
18 papers reflecting names, addresses, telephone numbers, pager numbers, fax
19 numbers and/or telex number of sources of supply, customers, financial institution,
20 and other individual or businesses with whom a financial relationship exists;

21 (9) Correspondence, papers, records, and any other items showing
22 employment or lack of employment of defendant or reflecting income or expenses,
23 including but not limited to items listed in paragraph 5, financial statements, credit card
24 records, receipts, and income tax returns;

25 (10) Paraphernalia for packaging, weighing and distributing
26 Methamphetamine, including but not limited to scales, baggies, and other items used
27 in the distribution operation, including firearms;

1 (11) Electronic equipment, such as computers, telex machines, facsimile
2 machines, currency counting machines, telephone answering machines, and related
3 manuals used to generate, transfer, count, record and/or store the information
4 described above. Additionally, computer software, tape and discs, audio tapes,
5 electronic recording media, and the contents therein, containing the information
6 generated by the aforementioned electronic equipment; and communications devices,
7 including pagers and mobile telephones,

8 (12) Photographs of the crime scene and to develop any photographs taken
9 of the crime scene, including still photos and video cassette recordings and to develop
10 any undeveloped film located at the residence.

11 Are on this 30th day of July, 2014 in the unlawful possession of the
12 defendant(s) in:

13 A manufactured home with a green composition roof, cream colored vinyl
14 siding, and a tan colored skirting around the bottom portion of the residence. The
15 residence has a white colored entrance door facing to the north. The black numerals
16 "415" are affixed on the east side of the residence and are approximately six inches
17 high. The residence is maintained in a combination manufactured home and
18 recreational vehicle park with the name Acres Estates." Clark County Assessor
19 records indicate that the actual physical address of the residence is 13401 NE 28th
20 Street #415, Vancouver, County of Clark, State of Washington;

21 AND

22 Any vehicles registered to or operated by the occupants of the aforescribed
23 property,

24 AND

25 Any outbuildings, garages, sheds or the like, located on the aforescribed
26 property,

27 I am informed and aware, based upon the following:

1 Your affiant is employed by the Clark County Sheriff's Office and has been for
2 the last twelve years and nine months. Your affiant is currently assigned to the Clark
3 Vancouver Regional Drug Task Force (CVRDTF), and has been for the past five years
4 and nine months. During this employment your affiant has had over 720 hours of
5 training in criminal investigation and other law enforcement topics. Your affiant has
6 completed the 40 hour Clandestine Drug Laboratory Safety and Operations Course
7 and the 80 hour Drug Enforcement Administration Basic narcotics Officer Course.
8 Your affiant has participated in several drug investigations and arrests, including
9 having written or taken part in the service of a number of drug related warrants.

10 Your affiant has received training on the identification of controlled substances
11 and can identify marihuana, methamphetamine, heroin and cocaine through sight and
12 smell. Your affiant has personally seized these substances while participating in drug
13 related arrests and investigations and has confirmed such as controlled substances
14 through field tests and state laboratory examinations.

15 In this official capacity, prior to the presentation of this affidavit and within the
16 past 72 hours, DOC Officer Jennifer Thomas and I met with a Confidential and
17 Reliable Informant (CRI) working for the CVRDTF. The purpose of this meeting was
18 to conduct a controlled purchase of methamphetamine from a known
19 methamphetamine trafficker that the CRI knew as Jaime, and had also positively
20 identified through a Clark County Jail booking photo, as Jaime Cardenas-Paniagua.

21 Upon meeting with the CRI, the CRI's vehicle and person were searched for
22 drugs, money, or other contraband. Nothing was found. I then provided the CRI with
23 money I had previously checked out from the CVRDTF drug fund. The CRI had
24 already contacted Jaime to arrange the purchase of an amount of methamphetamine.

25 Officer Thomas and I then followed the CRI to 13401 NE 28th Street, the Acres
26 Estates mobile home park. Surveillance units inside the park kept the CRI under
27 constant observation, observing the CRI enter the suspect's manufactured home
which is in space #415. After a short period of time the CRI was observed exiting the

1 residence and kept under constant supervision as he/she entered his/her vehicle and
2 exited the mobile home park. Officer Thomas and I then followed the CRI to a pre-
3 arranged location.

4 Upon arriving at that location the CRI handed me a baggy containing an
5 amount of a crystal substance that he/she identified as methamphetamine. The
6 amount of methamphetamine was consistent with the amount of money paid. I later
7 field test a small amount of the suspected methamphetamine, and the field test
8 showed the correct color change to indicate a positive field test for methamphetamine.

9 The CRI and his/her vehicle were again searched for drugs, money, or other
10 contraband. Nothing was found. The CRI was then released.

11 As to the informant's credibility, Detective Gabriel and I met with the CRI to
12 conduct a reliability buy of methamphetamine. Upon meeting with the CRI, he/she
13 was searched for drugs, money, or other contraband and nothing was found. The
14 CRI's vehicle was also searched for the same and nothing was found. I provided the
15 CRI with money I had previously checked out from the CVRDTF drug fund. The CRI
16 was then kept under constant supervision as he/she drove to a meeting location and
17 made contact with a known methamphetamine dealer. Once at the location the CRI
18 and suspect exchanged drugs for money. The CRI was observed leaving the location
19 and drove directly back to a pre-arranged meeting location where Detective Gabriel
20 and I made contact with the CRI. The CRI handed me a baggy containing a crystal
21 substance the CRI identified as methamphetamine. A subsequent field test confirmed
22 the presence of methamphetamine. The CRI and his/her vehicle were again searched
23 for drugs, money, or other contraband and nothing was found.

24 As to the informant's basis of knowledge, the CRI has given information to the
25 Drug Task Force that has been corroborated through other sources. The CRI has
26 knowledge of the drug trade from previous involvement in the drug subculture.
27

1 As to the informant's motivation, the CRI is working for the Clark Vancouver
2 Regional Drug Task Force in exchange for consideration of a pending felony drug
3 charge.

4 As to the informant's criminal history, the CRI has been convicted of two felony
5 charges stemming from violations of the Uniformed Controlled Substances Act, and
6 two traffic misdemeanors.

7 As to the defendant's criminal history, Jaime Cardenas-Paniagua has been
8 convicted of two gross misdemeanors and two misdemeanors which are all traffic
9 related.

10 I know from my training knowledge and experience that persons involved in the
11 distribution of controlled substances commonly maintain records to assist them in their
12 business activities. That the records are used to record credits and debits, profits and
13 proceeds, and to reconcile profits and stock on hand. Because the suspect mentioned
14 above is involved in the distribution of controlled substances, to wit:
15 Methamphetamine, it is more likely than not that the records of this activity will be
16 found at 13401 NE 28th Street #415, Vancouver, County of Clark, State of
17 Washington.

18 I know from my training, knowledge and experience that persons involved in the
19 distribution of controlled substances almost always use packaging material including
20 plastic baggies to hold the controlled substances, repackage it in smaller quantities
21 utilizing scales to sell to individual users and these packaging materials will be found
22 at the same location as the controlled substances. I also know that subjects who
23 distribute Methamphetamine will also frequently consume Methamphetamine and will
24 have drug paraphernalia at their residence. Because the suspect mentioned above is
25 involved in the distribution of controlled substances it is more likely than not that
26 packaging material and drug paraphernalia will be found at 13401 NE 28th Street
27 #415, Vancouver, County of Clark, State of Washington.

1 I know from my training, knowledge and experience that most people involved
2 in the distribution and possession of controlled substances possess items of
3 identification (including but not limited to driver's licenses, rent receipts, bills, and
4 address books). I also know that these items are relevant to the identity of the
5 possessor of the controlled substances, possessor of other items seized, and
6 occupants of the premises searched. It is therefore more likely than not that items of
7 identification will be found at 13401 NE 28th Street #415, Vancouver, County of Clark,
8 State of Washington.

9 I know from my training, knowledge and experience that subjects involved in
10 Methamphetamine distribution hide controlled substances in many places, including
11 but not limited to, mattresses, inner walls, bathroom fans, secret compartments,
12 outbuildings and adjoining structures. I am seeking to search all areas of the
13 premises. I know from my training, knowledge and experience that pagers, drug
14 records, packaging material, weapons (including rifles, shotguns, and handguns) are
15 tools of the trade and instrumentality of the crime of delivery and trafficking in
16 controlled substances. That I am seeking to seize these items.

17 I know from my training, knowledge and experience that proceeds of the sales
18 and/or distribution of controlled substances are often found which include not only
19 monies, but items taken in trade or purchased with monies earned through illicit
20 activities, and although these items are subject to civil forfeiture the evidentiary value
21 in showing an ongoing conspiracy is invaluable. That I am seeking to seize these
22 items.

23 I know from my training, knowledge and experience, and investigation of this
24 case, the property to be seized is described as: any controlled substances, any money
25 or accounts, and/or other items of value including, but not limited to real property,
26 which constitutes profits and/or proceeds which were used or intended to be used to
27 facilitate prohibited conduct; any equipment including, but not limited to conveyances
and weapons which constitutes proceeds and/or profits which were used or intended

1 to be used or available to be used to facilitate prohibited conduct; any records and/or
2 proceeds of the above, constitutes profits, proceeds, and/or instrumentality of
3 delivery, and possession of the controlled substance Methamphetamine and is subject
4 to civil forfeiture.

5 I know from my training and experience people often communicate with each
6 other by phone to include cellular phones. Cellular phones store information within the
7 electronic memory. These records can be accessed directly on the cellular phone
8 through the electronic memory which can be protected with security codes. Some
9 cellular phones also function as a digital camera, taking pictures and storing the
10 picture within the cellular phone memory or with the service provider.

11 Suspect(s) commonly use their phones before, during and after a crime. The
12 history of phone calls with the phone company/carrier and in the electronic memory of
13 a cellular phone is a useful aid in identifying additional suspects or witnesses. Call
14 histories can confirm or refute statements by the suspect(s) and witnesses. Also,
15 phone call records can establish a time line of contacts made by the suspect(s) and
16 others. That I am seeking to seize those items and submit for analysis with a qualified
17 examiner.


18 Based on the foregoing, I believe there is probable cause, therefore, your
19 affiant requests this Search Warrant be issued pursuant to the State of Washington
20 Criminal Rules for Courts of Limited Jurisdiction, Rule 2.3, Section (c), authorizing the
21 search of the aforescribed residence, curtilage, and vehicles for the above-
22 described items and if any are found authorizing the seizure of the same as it appears
23 the above listed residence is involved in ongoing criminal enterprise involving the
24 distribution and delivery of the controlled substance Methamphetamine.

25
26
27 

Detective Robert Latter
Clark-Skamania Drug Task Force

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Subscribed and Sworn to before me this 30 day of July, 2014.


District Court Judge
Clark County
State of Washington

APPENDIX B

RCW 69.50.402**Prohibited acts: B — Penalties.**

(1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the commission pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the commission pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the treatment of multiple sclerosis, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the commission before the investigation has been begun: PROVIDED, That the commission, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the commission of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be

imprisoned for not more than two years, fined not more than two thousand dollars, or both.

[2013 c 19 § 107; 2010 c 177 § 7; 2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

Notes:

Intent -- Effective date -- 2003 c 53: See notes following RCW 2.48.180.

Severability -- Headings and captions not law -- Effective date -- 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

CLARK COUNTY PROSECUTOR

October 15, 2015 - 1:25 PM

Transmittal Letter

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Case Name: State v. Marbella Hernandez-Lorenzo

Court of Appeals Case Number: 47502-2

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